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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1096

CHARLES LANCE, JR.,

Petitioner,

vs.

LUCILLE PLUMMER et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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No. _____

CHARLES LANCE, JR.,

Petitioner,

vs.

LUCILLE PLUMMER et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Charles Lance, Jr., prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit entered in consolidated appeals No. 21904 and No. 22035 on December 9, 1965.*

---

* The respondents are Lucille Plummer, Julie Scott, Hosea Williams, Willie Bolden, Shed Dawson, James Eddie Williams, Arliss White, Johnel White, J. S. Jackson, William Wright, Joanne Anderson, Barbara Alexander, Christine Thompson, Johnny Hamilton, Diane Thomas, and Leonard Reed, "individuals and as representatives of a class." (R. 6.)

Citations to Opinions Below

The opinions of the United States District Court for the Middle District of Florida granting an interlocutory injunction on August 5, 1964 (R. 27-33; App. 17), adjudging petitioner to be in contempt of court on August 20, 1964 (R. 375-78; App. 23), and entering a permanent injunction against petitioner and others on September 19, 1964 (R. 421-28; App. 26) are unreported and have been printed in Appendix A hereto. The opinion of the Court of Appeals for the Fifth Circuit is reported in 353 F.2d 585 and is printed in Appendix A hereto (App. 32). The judgments of the United States Court of Appeals for the Fifth Circuit entered in cases No. 21904 and No. 22035, respectively, are printed in Appendix A hereto (App. 46, 47).

Jurisdiction

The opinion and judgments of the Court of Appeals were entered on December 9, 1965. The statutory provision believed to confer jurisdiction on this Court to review the judgments in question by writ of certiorari is 28 U.S.C., § 1254(1).

Questions Presented

1. Whether a United States District Court has jurisdiction to entertain a class action on behalf of all "members of the Negro race" for the enforcement of rights based on Title II of the Civil Rights Act of 1964, 42 U.S.C., § § 2000a-2000a-6.

2. Whether an injunction order, purporting to enjoin parties to the litigation "and any other persons to whom notice or knowledge of this Order may come" is binding on persons other than parties receiving notice or knowledge of the order

so that such persons may be adjudged to be in contempt of court if found to have committed acts of the type prohibited by the order.

3. Whether a United States District Judge has the power to require a deputy sheriff appointed by state law to "give up his badge and cease his functions as a peace officer" until he has satisfied the District Judge that he "is no longer engaging in any of the acts prohibited" by the District Judge's injunction order purporting to bind "all persons to whom notice or knowledge of this Order may come."

Statutes and Rules Involved

The statutory provisions involved are Titles II and IX of the Civil Rights Act of 1964 (42 U.S.C., §§ 2000a-2000a-6, and 42 U.S.C., § 2000h), all of which have been printed in Appendix B hereto. Also involved are § 30.07, Florida Statutes 1965, and Rule 65(d), Federal Rules of Civil Procedure, printed in Appendix B hereto.

Statement of the Case

Petitioner seeks a review of judgments of the Court of Appeals affirming the District Judge's order that petitioner resign his position as deputy sheriff, surrender his badge and "no longer act under any color, guise, or pretense as a law enforcement or peace officer," until he satisfies the United States District Judge that he is no longer engaging in any acts prohibited by the District Judge's injunction order, entered in a case to which petitioner was not a party, purporting to enjoin all persons "to whom notice or knowledge of this Order may come" from interfering with the efforts of "any person of the Negro race" to enforce and enjoy full use of

public accommodations under Title II of the Civil Rights Act of 1964 (42 U.S.C., §§ 2000a-2000a-6).

On July 2, 1964, the Civil Rights Act of 1964 became law. On July 20, 1964, the respondents, alleging that they were "members of the Negro race" and represented a class consisting of "all other persons in St. Johns County, Florida, who are similarly situated and affected," filed their complaint in the United States District Court for the Middle District of Florida praying that the court enjoin the defendants named therein "and all persons similarly situated" from depriving or attempting to deprive "any person" of the right to full use of public accommodations as provided by §§ 201 and 202 of the Civil Rights Act of 1964 (42 U.S.C., §§ 2000a, 2000a-1). The complaint alleged that persons and firms named therein as Class I defendants represented a class consisting of all persons owning, operating or managing public accommodations in St. Johns County, all of whom had refused to serve Negroes "by reason of their race and color." The complaint also alleged that the persons and organizations named therein as Class II defendants had threatened and intimidated both "Negroes" and Class I defendants to defeat the purposes of Title II of the Civil Rights Act of 1964 and represented a class consisting of "persons who act in the selfsame manner" (R. 6-14).

The petitioner, Charles Lance, Jr., was not named as a party defendant.

On August 5, 1964, the District Judge entered an order for interlocutory injunction (R. 27-33). Paragraphs 1 and 2 of such order enjoined certain of the named Class I defendants from refusing to make full and unrestricted use of their facilities "available to Negroes" (R. 27-30). Paragraphs 3 and 4 of the order enjoined certain of the named Class II defendants, all members of the Ancient City Hunting Club and *"any other persons to whom notice or knowledge of this Order may come"*

from interfering with or threatening "any person of the Negro race" or any Class I defendant for the purpose of preventing the full enjoyment by "Negro persons" of the public accommodations owned or operated by the Class I defendants (R. 30-33).

On August 11, 1964, petitioner Lance, who was a bonded, but unsalaried, deputy sheriff, was heard to use the words "black bastards" as Arthur Funderberk and two other Negroes, none of whom was a named plaintiff in the case, were leaving after being served in a restaurant operated by a Class I defendant (R. 75-77, 97-99). On August 12, petitioner Lance followed an automobile driven by Funderberk on the public streets (R. 77-82). On August 13, Funderberk signed an affidavit stating that he had been "threatened" and "followed" by Lance (R. 36-37). On August 14, one of the attorneys for the plaintiffs filed the Funderberk affidavit, together with his own affidavit alleging, on information and belief, that Lance was a member of the Ancient City Hunting Club.

In the afternoon of Saturday, August 15, 1964, petitioner Lance was served with an order directing him to appear before the District Judge on Monday, August 17, 1964, to show cause why he should not be adjudged to be in civil contempt because of his wilful disobedience of the order for interlocutory injunction entered August 5, 1964 (R. 40).

Petitioner Lance appeared before the court on August 17, 1964, was called to the stand "as an adverse witness on behalf of the plaintiffs" and was vigorously cross examined by counsel for the plaintiffs and the District Judge (R. 137-206). At the conclusion of the hearing, the District Judge found that Lance was not a member of the Ancient City Hunting Club but that he "had actual knowledge and notice of the entry of the injunction and, in general, of its terms" and had violated paragraphs 3 and 4 of the order by cursing and following Funderberk (R. 367).

On August 20, 1964, the District Judge entered the order adding Lance as a Class II defendant and finding Lance guilty of "civil contempt" for having violated the terms of paragraphs 3 and 4 of the interlocutory injunction (R. 375-78; App. 23-25). The order required that within 20 days Lance

> ". . . shall submit a verified report to this Court that he has resigned his position as deputy sheriff of St. Johns County, Florida, and surrendered his badge and other incidents of office and of police equipment to his superiors; and that he shall no longer act under any color, guise, or pretense as a law enforcement or peace officer."
>
> R. 377; App. 24

The order also required that such verified report contain "proof of payment" by Lance of the sum of $200 to Tobias Simon, as attorney for the plaintiffs, and of all taxable court costs (R. 377-78; App. 24-25).

Petitioner Lance, conceiving that the contempt judgment had been entered against him as a non-party and was, therefore, appealable, entered an appeal to the United States Court of Appeals for the Fifth Circuit (Case No. 21904) on September 15, 1964 (R. 420). The main cause proceeded to the entry of a permanent injunction against petitioner Lance, although no further pleadings were filed and no testimony was taken following the District Judge's order that Lance be made a party (R. 421-28; App. 26). On September 19, 1964, petitioner Lance appealed from the permanent injunction (Case No. 22035) and the two appeals were consolidated by order of the Court of Appeals (R. 461).

Because of the importance of the questions involved, the attorney generals of Florida, Georgia, Louisiana and Mississippi appeared as amici curiae in the Court of Appeals.

On December 9, 1965, the Court of Appeals for the Fifth Circuit entered its opinion affirming the orders appealed from, with the provision that the contempt judgment be modified by adding the following language:

> "The sanction affecting respondent's power to act as a *law enforcement* or peace officer shall continue until the said Charles Lance shall purge himself by satisfying the court that he is no longer engaging in any of the acts prohibited by paragraphs 3 and 4 of the Injunction dated August 5, 1964."
>
> *Lance* v. *Plummer* (5th Cir. 1965), 353 F.2d 585, 592 (App. 45)

Reasons for Granting the Writ

I.

In holding that a United States District Court has jurisdiction to entertain a class action on behalf of all "members of the Negro race" for the enforcement of rights based on Title II of the Civil Rights Act of 1964, the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, and has so far sanctioned such a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Section 207 of Title II of the Civil Rights Act of 1964 (codified as Chapter 21, Subchapter II, Title 42 U.S.C.) gives the district courts of the United States jurisdiction of proceedings instituted pursuant to Title II, but also provides that "[t]he remedies provided in [Title II] shall be the exclusive

means of enforcing the rights based on [Title II]" (42 U.S.C., §2000a-6). The remedies provided in Title II are (1) "a civil action for preventive relief . . . by the person aggrieved" (§ 204, Civil Rights Act of 1964; 42 U.S.C., § 2000a-3), and (2) a civil action for preventive relief by the Attorney General where "any person or group of persons is engaged in a pattern or practice of resistance" to the rights secured by Title II (§ 206, Civil Rights Act of 1964; 42 U.S.C., § 2000a-5).

In filing this suit as a class action on behalf of all "members of the Negro race" to enjoin an alleged general pattern or practice of resistance to Title II, plaintiffs' attorneys, who acted "[o]f and for the N.A.A.C.P. Legal Defense and Educational Fund, Inc." (R. 14), wrongfully usurped the authority vested in the attorney general. The action was not a remedy provided in Title II and the District Court was without jurisdiction.

In rejecting petitioner Lance's contention that the District Court had no jurisdiction to entertain a class action on behalf of all members of the Negro race, the Court of Appeals said:

> "We do not find this argument persuasive, especially in light of the further language in § 207(b) which says, 'but nothing in this title shall preclude any individual * * * from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right' . . . ."
>
> 353 F.2d at 591 (App. 41)

Thus, the Court of Appeals erroneously interpreted the words "such right" as used in § 207(b) to refer to the rights based on Title II. A reading of § 207(b) in its entirety clearly shows that the words "such right" refer to any right other than those based on Title II:

> "The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on

this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."

42 U.S.C., § 2000a-6(b)

The decisions in the courts below create an incongruous result which is of importance to the public at large. Whereas any person, who is a member of any race other than the Negro race and is aggrieved by a denial of full use of the accommodations of the Class I defendants, must look to the Civil Rights Act for his remedy, a member of the Negro race so aggrieved looks to the injunction for his remedy and may have the offender brought in on little or no notice to show cause why he should not be adjudged to be in contempt of court.

II.

In holding that an injunction order purporting to enjoin parties to the litigation "and any other persons to whom notice or knowledge of this Order may come" is binding on persons, other than parties, receiving notice or knowledge of the order so that such persons may be adjudged to be in contempt of court if found to have committed acts of the type prohibited by the order, the Court of Appeals has rendered a decision in conflict with a decision of this Court and a decision of the Court of Appeals for the Eighth Circuit on the same matter.

In *Chase Nat. Bank* v. *City of Norwalk, Ohio* (1934), 291 U.S. 431, 434, 54 S.Ct. 475, 476, 78 L.Ed. 894, this Court held invalid an injunction order purporting to enjoin "all persons whomsoever to whom notice of this order shall come." And in *Kean* v. *Hurley* (8th Cir. 1950), 179 F.2d 888, 889, the Court of Appeals for the Eighth Circuit held invalid an injunction order purporting to enjoin "all persons whomsoever from and after the time they severally obtain notice or knowledge of the issuance of the injunction." The decision in the court below affirming an injunction order purporting to enjoin "any other persons to whom notice or knowledge of this Order may come" is in direct conflict with the cited decisions. It is also in conflict with the provisions of Rule 65(d), Federal Rules of Civil Procedure, limiting the scope of injunction orders (App. 57).

The order to show cause issued to petitioner Lance as an alleged "member of the Ancient City Hunting Club, and as such member a Class II Defendant" (R. 39-40). When the evidence failed to show that Lance was a member of the Ancient City Hunting Club (R. 352), but did show that Lance

had heard on television of the issuance of the injunction order (R. 162, 209), the District Judge found that "he had actual knowledge and notice of the entry of the injunction and, in general, of its terms" (R. 367), and adjudged him guilty of contempt for having violated paragraphs 3 and 4 of the injunction order (R. 367, 377.).*

The continuing existence of a permanent injunction purporting to be binding on all persons having knowledge or notice of the injunction is an unlawful threat to the freedom of every citizen residing within the Middle District of Florida. This Court should exercise its supervisory power to remove that threat.

---

* The Court of Appeals' decision indicates that the record would have supported a finding that Lance's conduct was in active concert or participation with Chew, a Class I defendant, and suggests that such a finding would justify Lance's conviction of contempt. The short answer to that suggestion (other than the fact that it changes the bases of both the charge and the judgment against Lance) is that Chew was enjoined by paragraphs 1 and 2 of the injunction order only and was not enjoined by paragraphs 3 and 4 except as he might come within the term "other persons having notice or knowledge." Accordingly, a finding that Lance acted in participation with Chew in violating paragraphs 3 and 4 would have made no material difference.

III.

In holding that a United States District Judge has the power to require a deputy sheriff appointed by state law to "give up his badge and cease his functions as a peace officer" until he has satisfied the District Judge that he "is no longer engaging in any of the acts prohibited" by the District Judge's injunction order purporting to bind "all persons to whom notice or knowledge of this Order may come," the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, and has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this Court's power of supervision.

In the contempt judgment, the District Judge imposed as a sanction the requirement that petitioner Lance surrender his badge and report under oath that he would "no longer act under any color, guise, or pretense as a law enforcement or peace officer" (R. 377). The Court of Appeals modified the District Judge's order to provide that this sanction should continue only" until the said Charles Lance shall purge himself by satisfying the court that he is no longer engaging in any of the acts prohibited" (353 F.2d at 592).

The decisions in the courts below vitally affect the balance of powers between the state and federal governments. If officers elected or appointed under the state law and deriving their powers from the state law are only free to exercise such powers upon satisfying a United States District Judge that they are not engaging in acts prohibited by orders of a United States District Judge, the states and citizens of the states have lost their right of self-government.

The decisions in the courts below wrongfully deprive petitioner Lance of his civil right to be and function as an officer of the State of Florida. More than that, they wrongfully deprive the people of the State of Florida of their right to have state officers of their own choosing. Petitioner Lance was appointed as deputy sheriff pursuant to the provisions of § 30.07, Florida Statutes 1965, by the sheriff duly elected by the voters of St. Johns County, Florida. His right to serve in that capacity cannot be subject to the pleasure of a United States District Judge.

The widespread importance of this question resulted in the appearance in the Court of Appeals of the attorney generals of the states of Florida, Georgia, Louisiana and Mississippi as amici curiae. The importance of the question requires that this Court review the decision below.

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

OPINIONS AND JUDGMENTS IN THE COURTS BELOW

Opinions and Judgments in the United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-187-Civil-J

LUCILLE PLUMMER, et al.,

Plaintiffs,

vs.

JAMES E. BROCK, as owner,
operator or manager of
MONSON MOTOR LODGE, et al.,

Defendants.

ORDER FOR INTERLOCUTORY INJUNCTION
(Filed August 5, 1964)

Upon the Plaintiffs' application for interlocutory injunction against Class I Defendants heard by and submitted to the Court, after notice, on July 28, 29 and 30, 1964, upon the testimony and other proofs adduced by the parties at said hearing, upon the argument and submission by counsel for the respective parties, and in accordance with the Findings of Fact and Conclusions of Law this day filed by the Court

herein, and in accordance with the consent on behalf of Class II Defendants represented by Frank Howatt, Esq., (set forth in full in the transcript of a conference between the Court and counsel occurring at 2:45 P.M., Thursday, July 30, 1964, by reference made a part hereof, it is now by the Court

ORDERED:

1. With respect to the places of public accommodation owned, managed or operated by them, identified by name and address following name of each such Defendant, the Defendants James E. Brock and Sea Wall Motor Lodge, Inc., individually and as owner, managers or operators of Monson Motor Lodge, 32 Bay Street, St. Augustine, Florida; James A. Kalivas, individually and as owner, manager or operator of Chimes Restaurant, a restaurant, 12 Bay Street, St. Augustine, Florida; William Chew, Johnnie Chew and Empire Inns, Inc., individually and as owners, managers or operators of Palms Congress Inn and Restaurant, 137 San Marco Avenue, St. Augustine, Florida; Leonard L. Grissom, individually and as owner, manager or operator of Grissom's South Seas Restaurant, 841 Anastasia Boulevard, St. Augustine, Florida; Wallace S. and Mary E. Colley, individually and as owners, managers or operators of Colley's Shrimp House, 108 Anastasia Boulevard, St. Augustine, Florida, and Colley's Shrimp House #2, 10 Marine Street, St. Augustine, Florida, restaurants; Tom Xynides, individually and as owner, manager and operator of Sea Fair Restaurant, 120 San Marco Avenue, St. Augustine, Florida; Mary M. Hadjis, individually and as owner, manager or operator of Sea Fair Restaurant, 1 Anastasia Boulevard, St. Augustine, Florida; Sam Russo, individually and as owner, manager or operator of Flamingo Restaurant, a restaurant, 349 San Marco Avenue, St. Augustine, Florida; Kenneth R. Kyle, individually and as owner, manager or operator of Roscoe's

Restaurant, a restaurant, 475 San Marco Avenue, St. Augustine, Florida; George and Dovey Alderman, individually and as owners, managers or operators of Del Monico Restaurant, a restaurant, 15 King Street, St. Augustine, Florida; Wallace A. Mussellen, individually and as owner, manager or operator of Briny Deep Restaurant, a restaurant, No. 4 A1A South, St. Augustine Beach, Florida; J. M. Victor, individually and as owner, manager or operator of Victor's Restaurant, a restaurant, 3009 Ponce de Leon Boulevard, St. Augustine, Florida; James R. and Emily M. Alexander, individually and as owners, managers or operators of Alexander's Ranch House, a restaurant, 410 Anastasia Boulevard, St. Augustine, Florida; Emery J. Pacetti, individually and as owner, manager or operator of Marty's Restaurant, a restaurant, 2703 Ponce de Leon Boulevard, St. Augustine, Florida, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, are each, until further Order of this Court, with respect to the places of public accommodation identified above as owned, managed or operated by the respective Defendants, enjoined and restrained from:

(a) Refusing to admit Negroes to their respective premises upon the same basis, to the same extent and under the same conditions that non-Negroes of the general public are admitted to said premises;

(b) Failing or refusing, upon their respective premises, to sell beverages, food or meals and to provide service and accommodations to Negro patrons upon the same basis, to the same extent, and in the same manner that beverages, food, meals, service and accommodations are made available to patrons of other races; and

(c) Otherwise, with respect to their respective premises, failing or refusing to make any or all of the

goods, services, facilities, privileges, advantages or accommodations of said premises available to Negroes upon the same basis, to the same extent and under the same conditions that the same are made available to patrons of other races.

2. The effective date of the injunctive provisions of Paragraph 1 hereinabove is fixed at Saturday, Augustine 8, 1964.

3. Effectively (sic) immediately, and without the posting or filing of injunctive bond by Plaintiffs, it is further ORDERED that Holsted Richard Manucy, Gene Manucy, Holsted David Manucy, Herbert R. Manucy, Alonzo H. Manucy, Jr., Buddy Cooper, M. E. Cooper, Bobby Lee Bacon; Melvin E. Manucy, Pat Winston Howard, and Holsted Richard Manucy as President of Ancient City Hunting Club and/or Ancient City Gun Club, an unincorporated and unchartered voluntary association of individuals, and each member of said association or organization, and any other persons to whom notice or knowledge of this Order may come, shall not in any way interfere with, molest, threaten, intimidate or coerce any person of the Negro race with the purpose of interfering with such person's right to seek, use and enjoy the goods, services, facilities, privileges, advantages and accommodations of any, all or either of the places of public accommodation identified by name and address in Paragraph 1 hereof, nor attempt to so interfere with, molest, threaten, intimidate or coerce any person of the Negro race for such purpose, nor punish or attempt to punish any person of the Negro race for exercising, having exercised or attempting to exercise any right or privilege granted hereunder.

4. Effective immediately, and without the posting or filing of injunctive bond by Plaintiffs, it is further ORDERED that none of the persons specifically identified in Paragraph 3

hereinabove, nor any other person to whom notice or knowledge of this Order may come, shall in any way interfere with, molest, threaten, intimidate or coerce any, all or either of the several Class I Defendants identified by name, establishment and address in numbered Paragraph 1 hereof, with the purpose of causing him, her, it or them to deny, abridge, withhold, condition, limit or otherwise interfere with Negro persons in their securing food, beverages, service and accommodations at and in their admission to and use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations, of any, all or either of the said establishments identified in Paragraph 1 hereof.

5. The Ancient City Hunting Club and/or Ancient City Gun Club is represented by its acknowledged President, Mr. Holstead Richard Manucy, through his counsel Frank Howatt, Esq., to be an unincorporated, unchartered, voluntary association of individuals. The size of the membership is not stated. However, the Defendant Holsted Richard Manucy in a press interview has claimed 1476 members in his organization. (See specifically the interview reported in the Miami Herald, Saturday, June 13, 1964, and Sunday, June 14, 1964, under the byline of Clarence Jones, Herald Staff Writer). This may be an inflated claim. Nevertheless recent events in St. Augustine indicate that the membership is of considerable size.

The Defendant Holstead Richard Manucy is directed to take such steps as may be necessary to inform the membership of this organization of this Order, and particularly of numbered Paragraphs 3 and 4 hereof. He is further directed to file, in person or by his counsel, Frank Howatt, Esq., within seven (7) days from the date of this Order, his written report to this Court indicating that this direction has been

complied with, and how and in what manner it has been complied with.

6. Issuance of this Interlocutory Injunction with respect to the Class I Defendants identified by name in Paragraph 1 hereof, is conditioned upon the Plaintiffs' filing with the Clerk of this Court, within three (3) days from the date hereof, surety bond in the amount of $1000.00 in the usual form of injunctive bond, for the payment of such costs and damages as may be incurred or suffered by any Class I Defendant restrained hereby who is eventually found to have been wrongfully enjoined or restrained hereby. The execution of such bond by three of the Plaintiffs herein as principals and by an approved surety company, as surety, shall be deemed sufficient. Such bond shall be taken before and approved by the Clerk of this Court.

DONE AND ORDERED at Jacksonville, Florida, within said District, this 5th day of August, 1964.

/S/ BRYAN SIMPSON
CHIEF JUDGE,
U. S. DISTRICT COURT

APPENDIX A

CONTEMPT JUDGMENT
(Filed August 20, 1964)

This matter coming before the Court upon the application of the plaintiffs for an order to show cause why certain named defendants should not be held in contempt of Court in the above entitled matter, and the parties hereto having appeared and being represented by their respective counsel after notice on August 17, 18, 19, 1964, and upon the testimony and other proofs adduced by the parties at said hearing, and upon argument and submission by counsel for the respective parties and in accordance with the findings and fact and conclusions of law made by the Court herein, and good cause being shown, it is now by the Court,

ORDERED, ADJUDGED AND DECREED as follows:

1. That as to the respondent, Johnnie Chew, the order to show cause herein is discharged.

2. That the respondents, William Chew and Empire Inns, Inc., have violated the interlocutory injunction dated August 5, 1964, and are hereby found guilty of civil contempt and directed henceforth to comply strictly with the terms of said injunction issued herein, and to further admit negro applicants (including negroes of the St. Augustine community) to the respondent motel on the same basis and conditions as white applicants are admitted and that the respondents permit negroes to have guests to their lodgings, whether white or negro, local or non-local, in the manner as white patrons. Further, respondents, William Chew and Empire Inns, Inc., shall within twenty days of the entry of this order, file with the Court a verified report showing compliance with this order, and accurately report the number of negro guests admitted to said motel and the number of negro applicants, local and non-

local, who were refused accommodations. Further, respondents, William Chew and Empire Inns, Inc., are ordered to pay to Tobias Simon, as attorney for plaintiffs, the sum of four hundred dollars as attorney's fees in this matter and proof of payment be included in said report.

3. That by virtue of the findings herein, Charles Lance, Jr., is hereby added as a named Class II defendant in the interlocutory injunction of August 5, 1964, and further, that the respondent, Charles Lance, Jr., having been found to have actual notice of the interlocutory injunction dated August 5, 1964, and to have violated the terms of paragraphs 3 and 4 thereof is hereby found to be guilty of civil contempt. The respondent, Charles Lance, Jr., is hereby ordered to obey all terms of the interlocutory injunction issued herein. Within twenty days of this order, he shall submit a verified report to this Court that he has resigned his position as deputy sheriff of St. Johns County, Florida, and surrendered his badge and other incidents of office and of police equipment to his superiors; and that he shall no longer act under any color, guise, or pretense as a law enforcement or peace officer. That the respondent, Charles Lance, Jr., is ordered to pay to Tobias Simon, as attorney for plaintiffs, two hundred dollars as his fee in this matter and that proof of payment be included in said report. It shall be further understood that the Court, in directing the respondent, Charles Lance, Jr., to resign from his position as an honorary deputy sheriff of St. Johns County, Florida, does not intend to interfere with or restrict in any way the powers and authority of the sheriff to administer his office and to appoint deputies or employ other persons in his department. This sanction has been imposed by the Court in these specific circumstances only in view of the particular findings made as to this respondent's conduct herein, and

that he was an unsalaried deputy working primarily on a voluntary basis without regular assignment or hours of duty.

4. In addition to the foregoing, respondent shall pay all taxable Court costs attributable to these proceedings within a twenty-day period and proof of payment shall be submitted to this Court in said reports.

DONE AND ORDERED at Jacksonville, Florida, within said District, this 20th day of August, 1964.

Original signed:

BRYAN SIMPSON
CHIEF JUDGE,
U. S. DISTRICT COURT

APPENDIX A

PERMANENT INJUNCTION
(Filed September 19, 1964)

THIS CAUSE having come on to be heard before me upon the plaintiffs' Amended Complaint, and the Answers thereto: In this matter, plaintiffs had sought a preliminary injunction. Extensive testimony was taken on July 28th, 29th and 30th, 1964. On July 30th, 1964, the designated Class II defendants consented through their counsel to the entry of an interlocutory injunction against them. On August 5th, 1964, this Court made certain findings of fact and conclusions of law and on that date entered an Order for Interlocutory Injunction against all the defendants named in the Amended Complaint except HORACE C. NIXON. On August 14th, 1964, an Order was entered directed to CHARLES LANCE, JR., to show cause why he should not be held in contempt for his willful disobedience of the aforesaid Interlocutory Injunction. Following hearings on August 17th, 18th and 19th, 1964, wherein CHARLES LANCE, JR., appeared and was represented by counsel, this Court made certain oral findings of fact on August 19th, 1964 (as also additional findings of fact dated September 2nd, 1964), and entered its Order of August 20th, 1964, wherein, inter alia, CHARLES LANCE, JR., was added as a party defendant in the within cause. The within matter came on to be heard on Final Hearing, duly noticed, on September 14, 1964. Counsel for plaintiffs and counsel for the named Class I defendants and the named Class II defendants and CHARLES LANCE, JR., were present. Counsel for plaintiffs announced that they would rely upon the evidence already adduced in support of the Petition for Interlocutory Injunction. Counsel for the defendants, when asked by the Court, stated that they had no objection to this procedure. Thereupon, counsel for the defendants then stated that they had no furher evidence to offer in defense. [Counsel for the

named Class II defendants also filed an Answer (dated August 20, 1964) wherein he consented to the entry of a permanent injunction.] The plaintiffs then presented evidence in support of their request for counsel fees. The matter did not proceed to Final Hearing with regard to the defendant EMPIRE INNS, INC. Becker, Ross & Stone, Esqs., appeared as counsel for the defendant EMPIRE INNS, INC., and orally requested a continuance on matters affecting their client. This request was granted and counsel of record for EMPIRE INNS, INC., was permitted to withdraw. October 3rd, 1964, is scheduled as the date for Final Hearing on pending matters against EMPIRE INNS, INC., as also for any other matters raised by motions duly and timely served on counsel for plaintiffs.

The Court finds:

1. The findings of fact and conclusions of law heretofore made in the within cause and dated August 5th, August 19th and September 2nd, 1964, remain unchanged.

2. No basis for relief has been shown relative to HORACE C. NIXON.

3. Reasonable counsel fees for plaintiffs' counsel would be $5,000.00, allocated as follows:

As against Class I defendants, $3,000.00;

As against Class II defendants, $2,000.00.

WHEREUPON, it is ordered as follows:

1. With respect to the places of public accommodation owned, managed or operated by them, identified by name and address following the name of each such defendant, the defendants JAMES E. BROCK and SEA WALL MOTOR

LODGE, INC., individually and as owners, managers or operators of MONSON MOTOR LODGE, 32 Bay Street, St. Augustine, Florida; JAMES A. KALIVAS, individually and as owner, manager or operator of CHIMES RESTAURANT, a restaurant, 12 Bay Street, St. Augustine, Florida; WILLIAM CHEW and JOHNNIE CHEW, individually and as managers or operators of PALMS CONGRESS INN AND RESTAURANT, 137 San Marco Avenue, St. Augustine, Florida; LEONARD L. GRISSOM, individually and as owner, manager or operator of GRISSOM'S SOUTH SEAS RESTAURANT, 841 Anastasia Boulevard, St. Augustine, Florida; WALLACE S. and MARY E. COLLEY, individually and as owners, managers or operators of COLLEY'S SHRIMP HOUSE, 108 Anastasia Boulevard, St. Augustine, Florida, and COLLEY'S SHRIMP HOUSE, #2, 10 Marine Street, St. Augustine, Florida, restaurants; TOM XYNIDES, individually and as owner, manager and operator of SEA FAIR RESTAURANT, 120 San Marco Avenue, St. Augustine, Florida; MARY M. HADJIS, individually and as owner, manager or operator of SEA FAIR RESTAURANT, 1 Anastasia Boulevard, St. Augustine, Florida; SAM RUSSO, individually and as owner, manager or operator of FLAMINGO RESTAURANT, a restaurant, 349 San Marco Avenue, St. Augustine, Florida; KENNETH R. KYLE, individually and as owner, manager or operator of ROSCOE'S RESTAURANT, a restaurant, 475 San Marco Avenue, St. Augustine, Florida; GEORGE and DOVEY ALDERMAN, individually and as owners, managers or operators of DEL MONICO RESTAURANT, a restaurant, 15 King Street, St. Augustine, Florida; WALLACE A. MUSSELLEN, individually and as owner, manager or operator of BRINY DEEP RESTAURANT, a restaurant, No. 4 A1A South, St. Augustine Beach, Florida; J. M. VICTOR, individually and as

owner, manager or operator of VICTOR'S RESTAURANT, a restaurant, 3009 Ponce de Leon Boulevard, St. Augustine, Florida; JAMES R. and EMILY M. ALEXANDER, individually and as owners, managers or operators of ALEXANDER'S RANCH HOUSE, a restaurant, 410 Anastasia Boulevard, St. Augustine, Florida; EMERY J. PACETTI, individually and as owner, manager or operator of MARTY'S RESTAURANT, a restaurant, 2703 Ponce de Leon Boulevard, St. Augustine, Florida, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, are each, with respect to the places of public accommodation identified above as owned, managed or operated by the respective defendants, permanently enjoined and restrained from:

(a) Refusing to admit Negroes to their respective premises upon the same basis, to the same extent and under the same conditions that non-Negroes of the general public are admitted to said premises;

(b) Failing or refusing, upon their respective premises, to sell beverages, food or meals and to provide service and accommodations to Negro patrons upon the same basis, to the same extent, and in the same manner that beverages, food, meals, service and accommodations are made available to patrons of other races; and

(c) Otherwise, with respect to their respective premises, failing or refusing to make any or all of the goods, services, facilities, privileges, advantages or accommodations of said premises available to Negroes upon the same basis, to the same extent and under the same conditions that the same are made available to patrons of other races.

2. HOLSTED RICHARD MANUCY, GENE MANUCY, HOLSTED DAVID MANUCY, HERBERT R. MANUCY, ALONZO H. MANUCY, JR., BUDDY COOPER, M. E. COOPER, BOBBY LEE BACON, MELVIN E. MANUCY, PAT WINSTON HOWARD, CHARLES LANCE, JR., RUSSELL R. ALLEN, JACK COLEMAN, J. R. WOODALL, DIXON STANFORD, JIMMIE STAFF, CHARLIE CLAUSMAN, JIM CRAIG, BUBBA MANUCY, and HOLSTED RICHARD MANUCY as President of ANCIENT CITY HUNTING CLUB and/or ANCIENT CITY GUN CLUB, an unincorporated and unchartered voluntary association of individuals, and each member of said association or organization, and any other persons to whom notice or knowledge of this Order may come, shall not in any way interfere with, molest, threaten, intimidate or coerce any person of the Negro race with the purpose of interfering with such person's right to seek, use and enjoy the goods, services, facilities, privileges, advantages and accommodations of any, all or either of the places of public accommodation identified by name and address in Paragraph 1 hereof, nor attempt to so interfere with, molest, threaten, intimidate or coerce any person of the Negro race for such purpose, nor punish or attempt to punish any person of the Negro race for exercising, having exercised or attempting to exercise any right or privilege granted hereunder.

3. None of the persons specifically identified in Paragraph 2 hereinabove, nor any other person to whom notice or knowledge of this Order may come, shall in any way interfere with, molest, threaten, intimidate or coerce any, all or either of the several Class I defendants identified by name, establishment and address in numbered Paragraph 1 hereof, with the purpose of causing him, her, it or them to deny, abridge, withhold, condition, limit or otherwise interfere with Negro per-

sons in their securing food, beverages, service and accommodations at and in their admission to and use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations, of any, all or either of the said establishments identified in Paragraph 1 hereof.

4. The obligations of the principals and sureties under the bonds heretofore filed in the within cause are vacated and discharged.

5. The Court declines to exercise its discretion to grant fees for plaintiffs' counsel in the within cause but costs of the within proceedings are taxed and assessed against the defendants, jointly and severally, for which let execution issue.

DONE AND ORDERED at Jacksonville, Florida, within said District, this the 19th day of September, 1964.

/S/ BRYAN SIMPSON
CHIEF JUDGE,
U. S. DISTRICT COURT

APPENDIX A

Opinion and Judgments In United States Court of Appeals

Opinion, 353 *F.2d* 585

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21904

CHARLES LANCE, JR.,

Appellant,

versus

LUCILLE PLUMMER, ET AL,

Appellees.

No. 22035

CHARLES LANCE, JR.,

Appellant,

versus

LUCILLE PLUMMER, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Florida

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(December 9, 1965.)

Before TUTTLE, Chief Judge, THORNBERRY, Circuit Judge, and CARSWELL, District Judge.

APPENDIX A

TUTTLE, Chief Judge:

This is an appeal from an injunction forbidding the appellant to interfere with the compliance by certain St. Augustine restaurants and motels with Title II of the Civil Rights Act, and from a judgment of civil contempt against appellant for violation of the order of injunction. The two appeals have been consolidated in this Court, so that the validity of the injunctive order and the order adjudging Lance in civil contempt are both before the Court for consideration.

On July 20, 1964, Lucille Plummer and seven other named individuals filed suit against James E. Brock and twenty other named individuals and corporations (designated as Class I defendants), who were owners, managers or operators of certain restaurants or motels in St. Augustine, Florida, and against Holsted R. Manucy and seventeen other named individuals, Ancient City Hunting Club or Ancient City Gun Club, and U. S. Klans, Knights of the Ku Klux Klan, Inc. (designated as Class II defendants). Jurisdiction of the district court was invoked pursuant to (a) 28 U.S.C.A. § 1343 (3), as also the Fourteenth Amendment; (b) 42 U.S.C.A. §§ 1981-85; and (c) Title II of the Civil Rights Act of 1964.

On July 28, 29 and 30, 1964, the district court received evidence on the plaintiffs' application for preliminary injunction with respect to Class I defendants. A subsequent hearing was scheduled on plaintiffs' application for preliminary injunction with respect to Class II defendants, but was not held, because on July 30, 1964, counsel for certain of the named Class II defendants, in a stipulation entered into in open court, consented to the entry of a temporary restraining order enjoining his clients, until further order of the court, from committing any of the acts charged in the complaint

to have been theretofore committed by them, without admitting that such acts had in fact been committed.[1]

On August 5, 1964, the district court entered findings of fact and conclusions of law, in which it was found that one or more named plaintiffs had on some occasion subsequent to July 2, 1964, been refused service in each of the named Class I defendants, "solely on the ground of race or color," and the court concluded that preliminary injunction should issue. The injunction, issued to be effective August 8, 1964, forbade the Class I defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them from further violation of Title II.

With respect to the Class II defendants, the injunction order further provided:

> "3. Effective immediately, and without the posting or filing of injunctive bond by Plaintiffs, it is further ORDERED that Holsted Richard Manucy, Gene Manucy, Holsted David Manucy, Herbert R. Manucy, Alonzo H. Manucy, Jr., Buddy Cooper, M. E. Cooper, Bobby Lee Bacon, Melvin E. Manucy, Pat Winston Howard, and Holsted Richard Manucy as President of Ancient City Hunting Club and/or Ancient City Gun Club, an unincorporated and unchartered voluntary association of individuals, and each member of said association or organization, *and any other persons to whom notice or knowledge of this Order may come,* shall not in any way interfere with, molest, threaten,

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1. The acts charged against the Class II defendants, in general, were that they were engaged in threatening and intimidating the restaurant owners and operators from complying with Title II of the Civil Rights Act of 1964 requiring that such restaurants and other public accommodations offer their services to persons without respect to race.

intimidate or coerce any person of the Negro race with the purpose of interfering with such person's right to seek, use and enjoy the goods, services, facilities, privileges, advantages and accommodations of any, all or either of the places of public accommodation identified by name and address in Paragraph 1 hereof, nor attempt to so interfere with, molest, threaten, intimidate or coerce any person of the Negro race for such purpose, nor punish or attempt to punish any person of the Negro race for exercising, having exercised or attempting to exercise any right or privilege granted hereunder.

"4. Effective immediately, and without the posting or filing of injunctive bond by Plaintiffs, it is further ORDERED that none of the persons specifically identified in Paragraph 3 hereinabove, *nor any other person to whom notice or knowledge of this Order may come,* shall in any way interfere with, molest, threaten, intimidate or coerce any, all or either of the several Class I Defendants identified by name, establishment and address in numbered Paragraph 1 hereof, with the purpose of causing him, her, it or them to deny, abridge, withhold, condition, limit or otherwise interfere with Negro persons in their securing food, beverages, service and accommodations at and in their admission to and use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations, of any, all or either of the said establishments identified in Paragraph 1 hereof." (Emphasis supplied.)

On August 11, 1964, Arthur Funderberk, and two other Negroes, none of whom was a named plaintiff in the case,

sought and received service in the Pancake House, a restaurant operated by William Chew, one of the named Class I defendants. The appellant, Charles Lance, Jr., who was a volunteer, unsalaried, deputy sheriff[2] who said he had been instructed by the sheriff of St. Johns County to protect Negroes testing the Civil Rights Law, was in the restaurant at the time. As Funderberk and his companions left the restaurant, they were followed by two white teenagers. The trial court found that Lance cursed the three Negroes who testified they heard the words, "black bastards." Lance testified that he said, "You know I have to protect these black sons of bitches."

On the following day, Funderberk and a companion unsuccessfully sought to register for a room in the Palms Congress Inn motel, adjoining the Pancake House and a part of the same establishment owned by Empire Inns, Inc., and managed by William Chew. At this juncture Lance, who had driven up to the motel right behind Chew entered the motel, and upon receiving what the court could find to be a "signal" from Mrs. Chew, proceeded to follow the Negroes, after they left the motel in a car at a time when the trial court found they neither needed nor asked for any protection from the sheriff's office; nor were they informed by Lance at this time

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2. The Florida statute permits a sheriff of a county to name any number of deputies, with or without salary, each of whom is apparently bonded by many of whom apparently are uncompensated and are appointed solely at their request. St. Johns County apparently had a great number of these so that, in fact, the trial court found that its sheriff appointed most everyone who asked and that he actually did not know all of his own deputies by name.

or any other time that he had any such purpose in following them.[3]

On August 14, 1964, a sworn petition was filed in the main cause, referring to the injunction order of August 5 and charging that Chew and Empire Inns, Inc., had violated the order and should be ordered to show cause why they should not be held in civil contempt. In addition, an affidavit was sworn to, stating that "Upon information and belief * * Charlie Lance * * * is a member of the Ancient City Hunting Club, and as such * * * a Class II Defendant herein." On August 14, the trial court issued an order directing "the defendants William Chew * * * Empire Inns, Inc., and Charles

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3. On August 13, Funderberk signed an affidavit to the foregoing facts stating that Lance "followed us all over town until we went back to the office." The extent to which Lance did, in fact, follow them "all over town," is indicated by the following testimony which was largely the basis of the trial court's finding that his conduct threatened the three Negroes:

"And I drove on out across San Marco Avenue and drove on, proceeding up Ponce de Leon (93) Boulevard, and I could see Mr. Chew coming behind—I mean, Mr. Lance; excuse me—Mr. Lance coming behind me in this jeep station wagon.

I drove on down San Marco Avenue, I mean Ponce de Leon Boulevard, and Mr. Charlie Lance came on up on the Boulevard and he proceeded right on behind me. I got the impression he was following me, so—

"THE COURT: You got what?

"THE WITNESS: The impression he was following behind me.

"THE COURT: All right.

"THE WITNESS: And so, instead of going the regular route that I would take, I proceeded to take a different direction. I turned off a street I ordinarily don't go to see was he following me. I turned off the street; Mr. Lance turned off the street. I speed up a little bit; Mr. Lance would speed up.

I went down to a library. I made a left turn. And that was out of the way that I would ordinarily go. And when I got on the street, made a left turn, Mr. Lance did the same thing. I turned left (94) at the next street; Mr. Lance did the same thing.

I went back up on Ponce de Leon Boulevard; Mr. Lance did the same thing.

So then I got the impression he was following me.

I proceeded on to my destination and he followed me until I came to the vicinity of the SCLC office."

Lance, Jr.," to appear before him on August 17 to show cause "why they should not be adjudged to be in civil contempt • • • by their wilful disobedience of the Order for Interlocutory Injunction entered • • • on August 5, 1964." Before the show cause order was served upon Lance, on the evening of August 14, Funderberk drove up to the adjoining motel and let two white men out of his car. At this time, appellant Lance was having dinner with his family in the Pancake House; whereupon he left his family and again followed Funderberk for a considerable distance.[4]

On August 15, the show cause order was served upon Lance and a hearing was had resulting in findings near the close of the hearings including the following:

> "With respect to the respondent, Charles Lance, Jr., the Court finds that, first of all, he had actual knowledge and notice of the entry of the injunction and, in general, of its terms; that on August 11, 12 and 14, he violated the terms of the Injunctive Order by cursing these three men, Funderberk, McBride and Lawton, as they were leaving the premises of the Palms Congress Restaurant, the Pancake House, I guess it's called; that he further violated the terms of paragraphs 3 and 4 of the Injunctive Order by intimidating, molesting, threatening, or attempting to do these things, to Arthur Funderberk on August 12 and August 14 by following him away from the Palms Congress Motel and Restaurant."

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4. Testimony which the trial court could credit showed that Lance again followed the Funderberk car which took a devious and evasive route. The following was so persistent on this occasion that Funderberk finally left his automobile and took a taxicab and went home.

Subsequently, on August 20, the trial court entered the following order:

> "That by virtue of the findings herein, Charles Lance, Jr., is hereby added as a named Class II defendant in the interlocutory injunction of August 5, 1964, and further, that the respondent, Charles Lance, Jr., having been found to have actual notice of the interlocutory injunction dated August 5, 1964, and to have violated the terms of paragraphs 3 and 4 thereof is hereby found to be guilty of civil contempt. The respondent, Charles Lance, Jr., is hereby ordered to obey all terms of the interlocutory injunction issued herein. Within twenty days of this order, he shall submit a verified report to this Court that he has resigned his position as deputy sheriff of St. Johns County, Florida, and surrendered his badge and other incidents of office and of police equipment to his superiors; and that he shall no longer act under any color, guise, or pretense as a law enforcement or peace officer. That the respondent, Charles Lance, Jr., is ordered to pay to Tobias Simon, as attorney for plaintiffs, two hundred dollars as his fee in this matter and that proof of payment be included in said report. It shall be further understood that the Court, in directing the respondent, Charles Lance, Jr., to resign from his position as an honorary deputy sheriff of St. Johns County, Florida, does not intend to interfere with or restrict in any way the powers and authority of the sheriff to administer his office and to appoint deputies or employ other persons in his department. This sanction has been imposed by the Court in these specific circumstances only in view of the particular findings made as to this respondent's conduct herein, and that he was an unsalaried deputy

working primarily on a voluntary basis without regular assignment or hours of duty."

Later, the trial court filed additional findings of fact which outlined factors influencing its decision to require Lance's resignation as a deputy sheriff. This latter requirement was stayed pending appeal by an order of this court entered on September 17, 1964. On September 14, 1964, the cases for permanent injunction were finally heard before the district court; all parties rested upon evidence already adduced at the hearing on the petition for interlocutory injunction. The district court then entered a permanent injunction on September 19, 1964. The appeal to this Court is taken from both the permanent injunction and the district court order of August 20, holding Lance in contempt. The cases have been consolidated for the purposes of appeal.

Upon this appeal, Lance makes several contentions attacking both the injunction order and his being treated as being subject to it and also the scope and validity of the contempt order itself.

Initially, appellant contends that the class action filed by the named plaintiffs was not an adequate vehicle upon which the trial court could enjoin conduct by the named defendants, and those in active concert with them, from denying rights to all Negro citizens. It is Lance's contention that the complaint could claim and actually achieve protection only for the named plaintiffs and could afford no protection to the particular movant, Funderberk, who sought and obtained the show cause order on the contempt proceedings. This contention is based upon the argument that § 204(a) of Title II of the Civil Rights Act of 1964 authorizes a civil action to be brought for preventive relief to "the person aggrieved" by the offender; the Act further provides a public remedy, available to the Attorney

General, whenever he has reasonable cause to believe that a pattern of resistance to the full enjoyment of any of the rights secured by the Act exists. From the existence of these two remedies, plus the Act's statement in § 207(b) that "The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title," appellant asks the Court to conclude that the district court had no jurisdiction to entertain a class action for the enforcement of rights based on Title II of the Act.

[1] We do not find this argument persuasive, especially in light of the further language in § 207(b) which says, "but nothing in this title shall preclude any individual * * * from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right," and in light of the fact that other civil rights statutes containing somewhat similar wording have not in the past been so construed. See, for instance, 42 U.S.C.A. § 1983 which says, "Every person * * * shall be liable to the party injured in an action at law * * * or other proper proceeding for redress." The limitation of the authority to bring an action in that section "to the party injured" has not been held to prevent proceedings by class suits. See Sharp v. Lucky, 5 Cir., 252 F.2d 910. We conclude that Congress did not intend to do away with the right of named persons to proceed by a class action for enforcement of the rights contained in Title II of the Civil Rights Act.

Appellant's next complaint is that he was improperly required to respond to a show cause order when he was not a named defendant, and there was no proof to the effect that he was a member of one of the Class II organizations. He contends that the court had no power to bind him simply because notice or knowledge of the order came to his attention.

It is certainly true that Rule 65(d) of Federal Rules of Civil Procedure provides that "Every order granting an injunction and every restraining order • • • is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." The court's order here complained of sought to bind all persons receiving actual notice whether or not they fell within the class of "parties to the action, etc." However, the court's findings clearly showed that its order adding Lance as a Class II defendant was justified from the court's determination (1) that his conduct was "in active concert or participation" with the named defendant William Chew and his wife, and (2) that he was doing the acts alleged in the complaint as being carried on by the named Class II defendants. There was nothing to prevent the court's adding any other named member of the second class of defendants for, as alleged in the original complaint, "Each class of defendants is in addition, representative of a larger class more fully described in the Amended Complaint." While this could, of course, not bind any person who did not fall within the ambit of the Federal Rules, it did permit the addition of any named person as a Class II defendant to conform to the proof as to conduct which would justify the court's considering him as an actor in the manner outlined in the original complaint.

[2-4] The admitted nexus between Lance and Chew during the period when Lance committed the acts in question, clearly warranted the trial court's determination that Lance was subject to the terms of the injunction as being in active participation with Chew. His conduct, having been properly found by the trial court to be such as was expressly prohibited by the injunctive order affecting the Class II defendants, also

warranted the trial court's adding him as an added named defendant of the second class. It is true that the trial court stated that no evidence had been introduced to show that Lance was a member of one of the organizations named in Class II. This, however, did not prevent him from being named as an individual member of the class.

The next question raised by appellant tests the validity of that part of the contempt order that required him to resign his position as deputy sheriff, ordering that he "shall no longer act under any color, guise, or pretense as a law enforcement or peace officer." Appellant contends that this is in the nature of punishment rather than in the nature of a sanction applied to cause Lance to comply with the court's injunctive order. The trial court concluded that the order depriving Lance of the right to serve as sheriff did not in any material way interfere with the functions of the State of Florida or of St. Johns County in any substantial manner. The court stated, "I conclude that if persons are appointed special or auxiliary deputies, without investigation, simply upon application, that it approaches the ludicrous to assert that the conduct by the Sheriff of his office is being interfered with in any meaningful way when one of such volunteers is required to divest himself of his authority by being required to resign as deputy."

[5-8] The parties are not in disagreement as to the nature of sanctions that can be imposed when a civil contempt violation occurs. Only remedial or coercive sanctions may be imposed in civil contempt proceedings, such as are designed to compensate the complainant for losses sustained and coerce obedience for the benefit of the complainant. 5 Moore, Federal Practice § 38.33 at 256. See Walling v. Crane, 5 Cir., 158 F.2d 80. If the trial court, as it found here, determines that a voluntary unpaid auxiliary or extra deputy sheriff is "riding

his badge," that is, using his badge for the very purpose of violating an injunctive order of the court by intimidating those whose duty, if any, it is to protect in the exercise of their rights, we think there can be no doubt about the power of the court to require him to give up his badge and cease his functions as a peace officer so long as he continues in such conduct. However, since sanctions imposed in civil contempt proceedings must always give to the alleged contemnor the opportunity to bring himself into compliance, the sanction cannot be one that does not come to an end when he repents his past conduct and purges himself. Thus, while the court here had the power to require Lance to surrender his badge and to remain off of the sheriff's list of auxiliary deputies so long as he continued to violate the terms of the injunctive order against the Class II defendants, such prohibition could not extend beyond such term. The prohibition, therefore, that Lance should "no longer act under any color, guise, or pretense as a law enforcement or peace officer" should be modified by expressly stating that such prohibition should last only until Lance should satisfy the trial court that he was no longer in violation of the injunctive order and that he would in good faith thereafter comply with the terms of the order.

[9] As to appellant's contention that the part of the order requiring the payment of the attorney's fee and the costs of bringing the proceedings were punitive, we think it plain that these requirements were permissible in a civil contempt proceeding. They are clearly compensatory to the injured party. Textag Co. v. Hayslip, 5 Cir., 192 F.2d 435; West Texas Utilities Co., Inc. v. NLRB, 92 U.S.App.D.C. 224, 206 F.2d 442; Nelson v. Steiner, 7 Cir., 279 F.2d 944.

We share with counsel for appellant his expressed opinion that it is desirable that the unhappy incidents that plagued

the community here involved may now be a matter of the past. In order that we may hasten the time when it can be ascertained whether this is truly so, we affirm the judgment of the trial court in each of the appeals before us after modifying the order in No. 21,904, the appeal from the contempt citation, by adding the following sentence to paragraph numbered 3 of the order dated August 20, 1964:

> "The sanction affecting respondent's power to act as a law enforcement or peace officer shall continue until the said Charles Lance shall purge himself by satisfying the court that he is no longer engaging in any of the acts prohibited by paragraphs 3 and 4 of the Injunction dated August 5, 1964."

The stay heretofore entered by this Court is now vacated and the mandate of this Court shall issue forthwith.

APPENDIX A

JUDGMENT in Case No. 21904
(Filed December 9, 1965)

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the Order of the District Court appealed from, in this cause be, and the same is hereby modified in accordance with the opinion of this Court, and, as modified, that said Order be and it is hereby, affirmed; The stay heretofore entered by this Court is now vacated and the mandate of this Court shall issue forthwith;

It is further ordered and adjudged that the appellant, Charles Lance, Jr., be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

December 9, 1965

Issued as Mandate: DEC. 9, 1965

APPENDIX A

JUDGMENT in Case No. 22035.
(*Filed December 9, 1965*)

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the Order of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Charles Lance, Jr., be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

December 9, 1965

Issued as Mandate: DEC. 9, 1965

APPENDIX B

STATUTES AND RULES INVOLVED

Title II, Civil Rights Act of 1964

Title 42, United States Code

SUBCHAPTER II.—PUBLIC ACCOMMODATIONS

§ 2000a. ***Prohibition against discrimination or segregation in places of public accommodation—Equal access***

(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the

premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) (i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

Operations affecting commerce; criteria; "commerce" defined

(c) The operations of an establishment affect commerce within the meaning of this subchapter if (1) it is one of the establishments described in paragraph (1) of subsection (b) of this section; (2) in the case of an establishment described in paragraph (2) of subsection (b) of this section, it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b) of this section, it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) of this section, it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or

any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

Support by State action

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this subchapter if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

Private establishments

(e) The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b) of this section. Pub.L. 88-352, Title II, § 201, July 2, 1964, 78 Stat. 243.

§ *2000a–1. Prohibition against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency*

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof. Pub.L. 88-352, Title II, § 202, July 2, 1964, 78 Stat. 244.

APPENDIX B

§ *2000a–2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a–1 of this title*

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 2000a or 2000a–1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a–1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a–1 of this title. Pub.L. 88-352, Title II, §203, July 2, 1964, 78 Stat. 244.

§ *2000a–3. Civil actions for injunctive relief–Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security*

(a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

APPENDIX B

Attorney's fees; liability of United States for costs

(b) In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings

(c) In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period

(d) In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a) of this section: *Provided,* That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further,* That upon expiration of such sixty-day period, the court may

extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance. Pub.L. 88-352, Title II, § 204, July 2, 1964, 78 Stat. 244.

§ *2000a–4. Community Relations Service; investigations and hearings; executive session; release of testimony; duty to bring about voluntary settlements*

The Service is authorized to make a full investigation of any complaint referred to it by the court under section 2000a–3(d) of this title and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties. Pub.L. 88-352, Title II, § 205, July 2, 1964, 78 Stat. 244.

§ *2000a–5. Civil actions by the Attorney General–Complaint*

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a

permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine

the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. Pub.L. 88-352, Title II, § 206, July 2, 1964, 78 Stat. 245.

§ 2000a–6. *Jurisdiction; exhaustion of other remedies; exclusiveness of remedies; assertion of rights based on other Federal or State laws and pursuit of remedies for enforcement of such rights*

(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right. Pub.L. 88-352, Title II, § 207, July 2, 1964, 78 Stat. 245.

APPENDIX B

Title IX, Civil Rights Act of 1964

Title 42, United States Code

SUBCHAPTER IX.—MISCELLANEOUS PROVISIONS

§ 2000h. *Criminal contempt proceedings: trial by jury, criminal practice, penalties, exceptions, intent; civil contempt proceedings*

In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention. Pub.L. 88-352, Title XI, § 1101, July 2, 1964, 78 Stat. 268.

APPENDIX B

Florida Statutes 1965, §30.07
(Vol. 1, page 123)

Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible.

Federal Rules of Civil Procedure, Rule 65(d)

Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1096

CHARLES LANCE, JR.,

Petitioner,

v.

LUCILLE PLUMMER et al.,

Respondents.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner, Charles Lance, Jr., prays that this Court grant a rehearing of its order of May 2, 1966, denying the petition for writ of certiorari, ... U.S. ....., and that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit in the above-styled cause as prayed for in the petition filed March 7, 1966.

Grounds for Granting Rehearing and Issuing the Writ

In addition to the grounds presented in the petition for writ of certiorari and set forth in the dissenting opinion of Mr. Justice Black, ... U.S. ....., 86 S. Ct. 1380, the following grounds exist for issuing a writ of certiorari:

I.

Subsequent to the filing of petitioner's petition for writ of certiorari, the United States Court of Appeals for the Fifth Circuit released its opinion in *National Association for the Advancement of Colored People* v. *Thompson* (5th Cir. 1966), 357 F.2d 831. In and by that decision, the Court of Appeals directed the United States District Court for the Southern District of Mississippi to issue an injunction enjoining the defendants (all of whom were either state, county or municipal officers), "their successors in office, their agents, servants and employees" from, among other things, "denying to Negro citizens equal access to and equal treatment in any place of public accommodation as defined by the Civil Rights Act of 1964" (357 F.2d at 841). Although *NAACP* v. *Thompson* follows the lead of the instant case in supplementing Title II of the Civil Rights Act of 1964 by a general injunction in favor of "Negro citizens," it does not follow the lead of the instant case and purport to make the injunction effective as "to any other persons to whom notice or knowledge of [the injunction] may come" [*Lance* v. *Plummer* (5th Cir. 1965), 353 F.2d 585, 588].

Thus, in the Southern District of Mississippi, the Fifth Circuit-directed injunction supplementing Title II of the Civil Rights Act of 1964 runs against no one other than the defendants, "their successors in office, their agents, servants and employees"; whereas, in the Middle District of Florida, the Fifth Circuit-approved injunction supplementing Title II runs against all persons who obtain knowledge or notice of the injunction. The petitioner was held to be subject to the injunction although the evidence showed no more than that petitioner had heard on television of its issuance (R. 162, 209). The question naturally arises as to whether it is the inclusion of the words "any other person to whom

notice or knowledge . . . may come" that makes television viewers subject to the provisions of such an injunction or whether television viewers in Mississippi are subject to the provisions of the injunction effective in that state, irrespective of the fact that it does not contain those words. Since the concept of an injunction operating against persons obtaining knowledge of its issuance is new to the law and, as pointed out in petitioner's petition for writ of certiorari and in Mr. Justice Black's dissent, a departure from prior decisions of this Court and of other courts of appeal, this Court should grant certiorari for the purpose of defining the full effect of such injunctions and establishing guidelines for the courts, the bar and litigants.

The situation in this case is similar to that in *Schriber-Schroth Co.* v. *Cleveland Trust Co.* (1938), 305 U.S. 47, 59 S.Ct. 8, 83 L.Ed. 34, cited in this Court's Rule 58 as an example justifying the granting of a petition for rehearing of an order denying a petition for writ of certiorari. In that case, this Court granted certiorari on a petition for rehearing upon a showing that "litigation elsewhere with a resulting conflict of decision was improbable because of the concentration of the automobile industry in the Sixth Circuit" (305 U.S. at 50, 59 S.Ct. at 10). In the instant case, litigation elsewhere with a resulting conflict of decision is improbable because of the concentration of civil rights cases in the Fifth Circuit.

II.

In addition to the grounds previously presented in petitioner's petition for writ of certiorari, the writ should be issued for the reason that petitioner was wrongfully deprived of the right to trial by jury provided by 42 U.S.C., § 2000h, in any proceeding for "criminal contempt arising under Title II" of the Civil Rights Act of 1964 (App. 56). Although the

proceedings against petitioner were labeled "civil contempt," they had all the characteristic indices of criminal contempt proceedings: (1) the order to show cause (R. 40), insofar as it related to petitioner, was issued on the court's own motion, the application for an order to show cause (R. 38) having been limited to certain named defendants; (2) the proceedings against petitioner were not conducted for the purpose of enforcing private rights, but were maintained for the purpose of vindicating the court's authority and punishing petitioner; and (3) the sanctions were punitive in nature.*

In holding that the proceedings against petitioner were proceedings for "civil contempt," the Court of Appeals has rendered a decision in conflict with this Court's decision in *Nye* v. *United States* (1941), 313 U.S. 33, 61 S.Ct. 810, 85 L.Ed. 1172, and the decision of the Court of Appeals for the First Circuit on the same point in which that court held:

> ". . . the trial court can have only a public as distinguished from a private interest in the enforcement of its own decrees. It seems to us, therefore, that regardless of what label may be appended to the proceedings by the court, any action of contempt initiated by the court of its own motion must be regarded as criminal in nature for the vindication of the court's authority and the punishment of the public wrong."
>
> *MacNeil* v. *United States* (1st Cir. 1956), 236 F.2d 149, 154; *cert. den.* 352 U.S. 912, 77 S.Ct. 150, 1 L.Ed. 2d 119.

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* The sanction requiring petitioner to pay plaintiffs' attorney $200 as a condition to purging the contempt (App. 24) is a punitive sanction; it is far different from a civil judgment in favor of plaintiffs for costs, including attorney's fees.

Also, the sanction requiring petitioner to resign as a deputy sheriff and to forever refrain from acting "under any color, guise, or pretense as a law enforcement or peace officer" (App. 24) was a punitive sanction.

In affirming the lower court's conviction of the petitioner without a jury trial, irrespective of the provisions of 42 U.S.C., § 2000h, the Court of Appeals has so far sanctioned such a departure by the district court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Conclusion

For the reasons set forth herein and in the petition for writ of certiorari, and for the reasons set forth in Mr. Justice Black's dissent, joined in by Mr. Justice Harlan, it is respectfully urged that rehearing be granted and that upon such rehearing a writ of certiorari issue to the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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Attorneys for Petitioner

Certificate of Counsel

I CERTIFY that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

Chester Bedell

Counsel